IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 461 OF 2005
IN
APPEAL NO. 171 OF 1985
IN
COMPANY APPLICATION NO. 135 OF 1984
IN
COMPANY PETITION NO. 313 OF 1978

N.D.S. Akbar Ali & Ors. .. Applicants.

V/s.

The Official Liquidator, H.C.Bombay .. Respondent.

Mr.H.V. Chande for the Applicants.

Ms.Pradhnya Matkar i/by Mr. R.M. Parekh for Landlord.

Ms. K.V. Gautam, Dy. Offcial Liquidator.

CORAM : S.C. DHARMADHIKARI,J.

DATED : 07TH APRIL, 2006

PC :

1. Heard Mr. Chande, appearing for the applicants and Mr. Parekh appearing for the Intervener.

2. The applicants pray that they may be allowed to take away a sum of Rs.Five lakhs alongwith the accrued interest which is deposited in this court by M/s. Royal Traders in pursuance of the direction issued vide judgment dated 28th October, 1988.

3. In support of this application, the applicant No.3 has filed the affidavit and has referred to the order passed by the appellate court in Appeal No. 171/1985.

4. One M/s. Royal Traders permitted a firm of M/s. Almas International to use the premises in question. It appears that the applicants are the partners of that Almas International. M/s. Royal Traders have been directed by the Division Bench, by the order above mentioned, to deposit in this court an amount of Rs. Five Lakhs with an undertaking on affidavit, giving the particulars of the security deposit and compensation that they may have received from the third party occupants.

5. In the order it is directed that as and when M/s. Almas International vacate the premises, they should apply to the Company Judge for return of the security deposit which would be deposited in this court by M/s. Royal Traders.

6. Since the company in liquidation was using this premises, the official liquidator applied to this Court for a direction to M/s. Royal Traders and M/s. Almas International, the applicants, to hand over possession of the said premises to him. The official liquidator was directed to take over the possession by the order dated

6th October, 1995. Thus the possession of these premises was to be taken from M/s. Royal Traders and handed over to the landlady. Against this order of 6th October, 1995 an appeal was preferred by the applicants. The appeal came to be dismissed by the division bench (Appeal No. 1048/1995). The said M/s. Almas International have lost the matter even in the Supreme Court.

7. Thereafter, the possession was handed over to landlady on 31st October, 2004. Now, therefore, the applicants claim back the security deposit of Rs. Five lakhs.

8. The intervener Dr. Sanjay Vrajlal Bagadia has filed affidavit in which he has pointed out that the applicants had caused some damage to the property and there are arrears of some electricity charges and society dues as also compensation. Dr. Sanjay Bagadia claims sum of Rs. 3,52,038/- from the Official Liquidator. Mr. Chande appearing for the applicants states that he has no objection if a sum of Rs. Two lakhs is allowed to be taken away by the said Dr. Sanjay Bagadia. However, the applicants do not admit their liability to pay amount or that no damage is caused by the applicants or by M/s. Almas International.

9. The official liquidator states that as far as the official liquidator is concerned, the said amounts are not to be paid by official liquidator or it is not the liability of the liquidator. In my opinion, appropriate order would be to allow the Intervener Dr.Sanjay Bagadia to take away sum of Rs.Two lakhs without prejudice to his rights and contentions and the balance should be handed over to the applicants after deducting from a sum of Rs. 10,000/-, which shall be paid over to the official liquidator.

10. The Company application stands disposed of in the above terms with no order as to costs.

11. All the concerned to act on an ordinary copy of this order duly authenticated by the Company Registrar.

7.4.2006 (S.C.Dharmadhikari,J)

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